140-A01-012

Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) POU920010121US1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on __December 19, 2006__ Signature_____ Typed or printed name ___JON Gibbons___	Application Number 09/944,721	Filed 08/31/2001
	First Named Inventor Dennis A. Quan, Jr.	
	Art Unit 2179	Examiner Truc T. Chuong

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
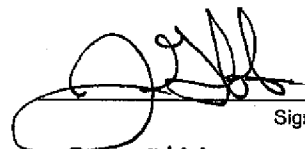(Form PTO/SB/96)

Signature

Jon Gibbons
Typed or printed name

☒ attorney or agent of record. 37,333
Registration number

561 989-9811
Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

December 19, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	09/944,721	Confirmation No.	:	1719
Applicant	:	Dennis A. QUAN Jr.	Customer No.	:	47486
Filed	:	August 31, 2001			
TC/A.U.	:	2179			
Examiner	:	Truc T. Chuong			
Docket No.	:	POU920010121US1 (140-A01-012)			

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following remarks are submitted to be considered along with the Applicant's Notice of Appeal. The references cited by the Examiner do not teach each and every element in the independent claims of the instant application, as required by 35 U.S.C. § 102.[1]

In the Pre-Appeal Brief submitted on January 27, 2006, the Applicant distinguished the present invention from the previously-cited references by carefully comparing the present invention to a well-known Microsoft, Corp. product, Microsoft Word. January 27, 2006 Pre-Appeal Brief, page 1, second paragraph to page 3, first paragraph. Presumably, the Applicant's arguments were persuasive in distinguishing the presently claimed invention from Microsoft Word, as the Examiner subsequently reopened prosecution on the merits and has not cited Microsoft Word as an anticipating reference in the present Office Action.

However, in the Office Action of May 5, 2006 and the Final Office Action of October 19, 2006, both following the Applicant's Pre-Appeal Brief of January 27, 2006, the Examiner once again cited a Microsoft product—with the same functionality and/or mode of operation as Microsoft Word—against the presently claimed invention. The Examiner has not shown any evidence of a change in the way standard Microsoft products function, or more specifically, has failed to bring forth evidence showing a difference between the inner workings of Microsoft Word and the cited Microsoft ESC reference. If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support this reference by filing an affidavit as is allowed under MPEP §707 citing 37 CFR 1.104(d)(2).

In Applicant's January 27, 2006 Pre-Appeal Brief, the following explanation of Microsoft Word was given: One embodiment of the present invention can be explained in terms of the

---

[1] See MPEP §2131 (Emphasis Added) "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim."

word processing program such as Microsoft Word ("MS Word"). In MS Word, when a document is opened and a user types at least one character into the document, then the user selects the "File" menu list option at the top of the screen, a drop-down menu list will open that presents menu selections to the user such as "New," "Open," "Close," "Save," and "Print". See FIG. 3, elements 318-328 of the instant application. However, if a user has not yet typed any characters, the options "Save," and "Print" will not appear, because there is nothing to save or print. Further, if a user has opened MS Word, but there is no document open inside of MS Word, clicking on the "File" menu list at the top of the screen will not yield the "Close," "Save," or "Print" options, because there is nothing to close, save, or print.

This principle applies to other user-interface objects as well, such as tables within an MS Word document. If a table is inserted within a document, clicking on the "Table" menu list will yield options such as "Insert Rows" or "Delete Rows." If no table is in the document, those options would not be applicable and should not be displayed.

In the prior art, programmers had to assign all of these attributes to each state of a program (i.e., document open, document open with text, etc.) during programming. The present invention allows the state of the program to dynamically determine the available options, thereby avoiding the tedious and time consuming task of programming each state.

In the present invention, a user interface (UI) object, such as a document, has a menu list associated with it. The menu list has choices, such as "File", "New", "Open", "Close", etc.. (See FIG. 3.) The novelty resides in the fact that each choice is associated with an "associative array" (see items 306-310 in FIG. 3). The term "associative array" is a well-known term of art in the computer software field and is defined on page 11 of the specification of the present application as "*a set of items, which are randomly accessible by a key, often a string.*"

The particular choices available to a user within each menu vary dependent upon a Boolean matching of the associative array entries to global context flags assigned to each document or object within the document, such as a table. These global context flags 304 are nested in structure and usage as shown in FIG. 3 and described on page 11, lines 21-22. Furthermore, as is shown in Table 3 and described in the specification, the global context flags are also associative arrays and the present invention is logically comparing two associative arrays using a Boolean AND operator. (See Page 11, line 18 through page 12, line 12.)

Returning to the MS Word example, when the application is running, and no document is open. (See FIG. 3) the global context flags are set to document=closed, document type=none, and document object=none. These are presented to three possible menu lists, in this example, file 318, table 330, and graphic 338. Each list has an associative array attached, which defines when the object should be shown. By logically comparing the associative array forming the global context flags with the corresponding menu items in an associative array using a Boolean AND function, the menu list of items that should be shown to a user are computed. For instance, if a document isn't opened, it wouldn't make sense to present a user with an option to "Save."

MS Explore Screen Captures Do Not Teach Boolean Comparison of Two Associate Arrays

Independent claims 1, 11, and 18 each recite performing a Boolean comparison of two associative arrays, i.e., global context flags (as defined in the specification as an associative array) and the associative array of UI objects. Specifically, claims 1 and 11 recite "performing a Boolean comparison between the global context flag and one or more of the entries in the associative array for each of the UI objects". Clearly, this is not taught by Microsoft.

In the Office Action of May 5, 2006 and the Final Office Action of October 19, 2006, both following the Applicant's Pre-Appeal Brief of January 27, 2006, the Examiner cited Microsoft ESC. The Examiner's new citation to Microsoft ESC does not reference or specify any new change to the way Microsoft products work, and specifically, does not present any change to the above-differentiated Microsoft Word product. FIG. 2 of the Microsoft ESC reference shows a selected item, Favorites. A drop down menu, Edit, at the top of the screen presents a list of available choices that are relevant to the selected item. Specifically, "Undo" is not available and grayed out because there is nothing to undo when simply highlighting an item. On the other hand, "Cut" and "Copy" are selectable because these functions can be performed to the selected item, Favorites.

As was explained in the January 27, 2006 Pre-Appeal Brief, in the prior art, which includes both Microsoft Word and the newly cited Microsoft ESC reference, programmers have to assign all available options to each state of a program (i.e., cut, copy, copy to folder, move

to folder, etc.) during programming. The choices that are not pre-selected by a programmer to be available are grayed out or not shown and therefore, not available to a user.

In stark contrast to now-known Microsoft products and the other prior art, the present invention allows the state of the program to dynamically determine the available options by using Boolean matching of two associative arrays, thereby avoiding the tedious and time consuming task of programming each and every option for each program state. This concept can clearly be seen in FIG. 3 of the instant application, by looking at how array 318 is matched to the array of global context flags 304 comprised of 306, 308, and 310. The matching determines which items in the menu list are to be displayed and made available to user and which are to be grayed out i.e., not selectable.

The Examiner gives no explanation of how the newly cited Windows XP example varies from the Microsoft Word program differentiated in the previous Pre-Appeal Brief. Each presents a one-to-one matching of item state properties and resulting menu options. Again, If the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707 citing 37 CFR 1.104(d)(2).

Giesen et al. Does Not Teach Boolean Comparison of Two Associate Arrays

In the Final Office Action of October 19, 2006, the Examiner also cited Giesen against the present invention under 35 U.S.C. § 102(e). Interestingly, the Giesen reference also belongs to the Microsoft Corporation through assignment and shows hybrid Windows-style screens. (See Giesen at FIG. 1._ Nowhere does Giesen discuss a variation on the traditional Windows programming style, which is where a programmer has to assign all available options to each state of a program (i.e., cut, copy, copy to folder, move to folder, etc.) during programming.

The Giesen reference does not even mention, suggest, or teach the terms "associative array", "global context flag", or "Boolean comparison between the global context flag and one or more entries in the associative array." Giesen mentions the word "array" in exactly two areas: Once in the description of the drawings at col. 3, lines 9, and a second time in the paragraph at col. 10, lines 14-28 continuing to col. 11, lines 1 describing a two dimensional array is a gallery of control objects. Nowhere does Giesen suggest that these

control objects are an associative array. Further, nowhere does Giesen suggest a Boolean comparison between the gallery of control objects and a global context flag. The Applicant respectfully requests that the Examiner state with particularity, exactly where in the Giesen and whether explicitly or inherently these requisite elements are found. The Examiner generally points to FIGs. 4-9 of Giesen reference without particular support to the above claimed elements. There is no showing by the Examiner that Giesen suggests these requisite elements because there is no suggestion contained in the Giesen reference itself. It is a well recognized principle in patent law that just because prior art can be modified in a manner suggested by the Examiner it does not make the modification anticipated or obvious unless the prior art suggested the desirability of the modification. Here Giesen is simply silent on these claimed elements. Further, not one of the references cited by the Examiner teach the problem solved by the present invention, i.e., allows the state of the program to dynamically determine the available options by using Boolean matching of two associative arrays by "Boolean comparison between the global context flag and one or more entries in the associative array. "

In view of the foregoing, independent claims 1, 11, and 18 distinguish over Microsoft ESC and Giesen because one or more elements are not present in Microsoft ESC or Giesen. All the remaining claims i.e. 2-10, 12-17, and 19-23 depend respectively from independent claims 1, 11, and 18. Accordingly, claims 1-23 of the present invention distinguish over Microsoft ESC and Giesen for the reasons shown above. The Applicant respectfully requests that the claims 1-23 of the present invention be allowed or in the alternative reopen prosecution on the merits citing art teaching every element recited in the claims.

Respectfully submitted,

Date: **December 19, 2006**   By: _____

Jon A. Gibbons
Registration No.: 37,333
Attorney for Applicants

FLEIT, KAIN, GIBBONS,
GUTMAN, BONGINI & BIANCO P.L.
One Boca Commerce Center
551 Northwest 77th Street, Suite 111
Boca Raton, Florida 33487
Telephone: (561) 989-9811
Facsimile: (561) 989-9812